

LABOR AND EMPLOYMENT

ALERT

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Employment Update: Another Pennsylvania Court Says A Medical Marijuana User Is Not Disabled Under State Disability Law

By Karen Baillie

Medical marijuana law as applied in employment settings continues to develop as courts in Pennsylvania grapple with discrimination claims based on a variety of statutory theories.

In a recent decision, *Palmiter v. Commonwealth Health Systems*,¹ the Court of Common Pleas for Lackawanna County, Pennsylvania dismissed a disability discrimination lawsuit brought by a former employee who claimed that she failed a drug screening due to the presence of medical marijuana used in compliance with the Pennsylvania Medical Marijuana Act (MMA).² This is the second lawsuit involving these same parties but based on different employment discrimination claims.

Last fall, the same trial court overruled the employer's preliminary objections and held that the former employee might be able to make out a case for discrimination against medical marijuana users under the **Medical Marijuana Act**. That case is currently up on appeal to the Pennsylvania Superior Court (No. 498 MDA 2020).

In the meantime, the former employee filed a second complaint against the employer on the same facts, but under **Pennsylvania's Human Relations Act** (PHRA),³ which prohibits employers from discriminating against qualified individuals with disabilities. The former

employee alleged in the second case that her prescribed medical marijuana use qualified as a disability under the PHRA. The Common Pleas Court of Lackawanna County has now addressed this second complaint.

Following the lead of the Pennsylvania Commonwealth Court, which recently ruled that the PHRA did not require a community college to accommodate the medical marijuana use of a nursing student,⁴ the *Palmiter* court similarly concluded that medical marijuana use alone does not qualify as a "disability" under the PHRA because the PHRA "specifically excludes illegal use of a controlled substance." In determining which use is "illegal" the PHRA references the *federal* Controlled Substances Act rather than state law. Marijuana remains unlawful under federal law. The Court noted that the MMA amended several other Pennsylvania state laws, but did not amend the PHRA or its definition of disability. Thus, use of medical marijuana cannot be a disability under the PHRA, and the former employee's claims under the PHRA were dismissed.

Employers in Pennsylvania should keep watching to see how the courts will handle and perhaps reconcile these issues. Will the courts rule on Palmiter's (or others') claim of discrimination under the MMA? How will the courts rule when a future litigant asserts that her underlying health conditions (rather than use of

¹ *Palmiter v. Commonwealth Health Systems, Inc.*, No. 20 CV 2544 (Nov. 10, 2020).

² 35 P.S. §§10231.101-10231.2110.

³ 43 P.S. §§951-963.

⁴ *Harrisburg Area Community College v. Pennsylvania Human Relations Commission*, No. 664 C.D. 2019, 2020 WL 6325862 (Pa. Commonw. Oct. 29, 2020).

medical marijuana) constitute disabilities that require accommodation under the PHRA? Will the Pennsylvania General Assembly consider amending the PHRA? Stay tuned. ◆

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